made herein.

The Examiner has also required that in Claim 7, line 2, the term "liquid-like" be changed to --liquid--. Applicant respectfully submits that Claim 7 was canceled by Amendment under 37 CFR § 1.115 filed October 7, 1999.

The Examiner has rejected Claims 1-6, 8-14, 16, and 17 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 5,991,948 in view of Yuen et al or Elkins. The Examiner states that it would have been obvious to one ordinarily skilled in the art at the time the invention was made to have used a thermal regulating unit with Stanley et al 's device, because Yuen et al and Elkins recognize the desirability of thermal regulating units with a similar body support in order to improve the comfort of the user.

Applicant respectfully submits that an obviousness-type, nonstatutory double patenting rejection is not permitted in this case, as the claimed subject matter is presented in a divisional application as the result of a restriction requirement made in the parent application, now U.S. Patent No. 5,991,948. MPEP 804. As provided in 35 U.S.C. 121:

> A patent issuing on an application with respect to which a requirement for restriction under this section has been made, or on an application filed as a result of such a requirement, shall not be used as a reference either in the Patent and Trademark Office or in the courts against a divisional application or against the original application or any patent issued on either of them, if the divisional application is filed before the issuance of the patent on the other application. [Emphasis added].

The Examiner made the restriction requirement in the parent in the Office Action dated August 6, 1998, and Applicant complied with the requirement in the Amendment Under 37 CFR 1.111 filed December 8, 1998. Under these circumstances, the Office clearly is not

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